

AMENDED IN SENATE SEPTEMBER 1, 2009

AMENDED IN SENATE JUNE 17, 2009

AMENDED IN SENATE JUNE 9, 2009

AMENDED IN SENATE MAY 5, 2009

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 696

Introduced by Senator Wright

February 27, 2009

~~An act to add Sections 40440.12 and 40440.13 to the Health and Safety Code, relating to air quality, and declaring the urgency thereof, to take effect immediately. An act to add and repeal Section 40440.13 of the Health and Safety Code, relating to the South Coast Air Quality Management District, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 696, as amended, Wright. ~~Air quality: CEQA exemptions: emission reduction credits. South Coast Air Quality Management District: CEQA: permits.~~

(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the

project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA exempts certain specified projects from its requirements.

*Under existing law, every air pollution control district or air quality management district in a federal nonattainment area for any national ambient air quality standard is required to establish by regulation, a system by which all reductions in emissions of air contaminants that are to be used to offset certain future increases in the emission of air contaminants are banked prior to use. The South Coast Air Quality Management District (district) promulgated various rules establishing offset exemptions, providing Priority Reserve offset credits, and creating or tracking credits used for offset exemption or Priority Reserve projects. In *Natural Resources Defense Council v. South Coast Air Quality Management District* (Super. Ct. Los Angeles County, 2007, No. BS 110792), the superior court found the promulgation of certain of these district rules to be in violation of CEQA.*

This bill would authorize the district to issue permits under specified circumstances, notwithstanding this court decision. The provisions of the bill would be repealed on May 1, 2012.

(2) This bill would state the findings and declarations of the Legislature concerning the need for special legislation.

(3) This bill would declare that it is to take effect immediately as an urgency statute.

~~(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA exempts certain specified projects from its requirements.~~

~~Under existing law, every air pollution control district or air quality management district in a federal nonattainment area for any national ambient air quality standard is required to establish, by regulation, a system by which all reductions in emissions of air contaminants that~~

are to be used to offset certain future increases in the emission of air contaminants are banked prior to use. Pursuant to this requirement the South Coast Air Quality Management District (district) promulgated various rules establishing offset exemptions, providing Priority Reserve offset credits, and creating or tracking credits used for offset exemption or Priority Reserve projects. In *Natural Resources Defense Council v. South Coast Air Quality Management District* (Super. Ct. Los Angeles County, 2007, No. BS 110792), the superior court found the promulgation of certain of these district rules to be in violation of CEQA.

This bill would exempt from the requirements of CEQA, except as specified, the adoption and implementation of specified district rules relating to emission credits. Because a lead agency would be required to determine whether the use of the credits qualifies for an exemption, this bill would impose a state-mandated local program.

(2) This bill would state the findings and declarations of the Legislature concerning the need for special legislation.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes-no.
State-mandated local program: yes-no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:
3 (a) As a result of the superior court decision in *Natural*
4 *Resources Defense Council v. South Coast Air Quality*
5 *Management District* (Super. Ct. Los Angeles County, 2007, No.
6 BS 110792) holding that the South Coast Air Quality Management
7 District (district) violated the requirements of the California
8 Environmental Quality Act (CEQA) (Division 13 (commencing
9 with Section 21000) of the Public Resources Code) in the
10 promulgation of certain district rules, the district is unable to issue

1 over a thousand pending permits that rely on the district's internal
2 offset bank to offset emissions.

3 (b) The district may also have to set aside several thousand
4 permits that were previously issued in reliance on the district's
5 internal offset bank.

6 (c) Prompt legislative action is necessary as an interim measure;
7 otherwise projects will be stopped from going forward or frozen
8 in place, representing significant losses to the economy and the
9 loss of numerous well-paying jobs.

10 (d) Nothing in the case described in subdivision (a) requires
11 the setting aside of any permit issued by the South Coast Air
12 Quality Management District to any essential public service, that
13 relied on Rule 1309.1, nor any permit that relied on Rule 1304,
14 between September 8, 2006, and November 3, 2008.

15 SEC. 2. Section 40440.13 is added to the Health and Safety
16 Code, to read:

17 40440.13. (a) Notwithstanding the decision of the court in
18 *Natural Resources Defense Council v. South Coast Air Quality*
19 *Management District* (Super. Ct. Los Angeles County, 2007, No.
20 *BS 110792*), the south coast district may issue permits in reliance
21 on, and in compliance with, south coast district Rule 1304, as
22 amended on June 14, 1996, except for an electrical generation
23 facility, and Rule 1309.1, as amended May 3, 2002, for essential
24 public services, as defined in subdivision (m) of Rule 1302, as
25 amended December 6, 2002.

26 (b) Nothing in this section affects the decision in the case
27 described in subdivision (a) concerning the adoption, readoption,
28 or amendment, or environmental review, of south coast district
29 Rule 1315.

30 (c) In implementing subdivision (a), the south coast district shall
31 rely on the emission reduction credit tracking system used prior
32 to the adoption of Rule 1315, until a new tracking system is
33 approved by the United States Environmental Protection Agency
34 and is in effect, at which point that new system shall be used by
35 the south coast district in implementing subdivision (a). The south
36 coast district shall make information concerning the credits, and
37 the tracking of these credits, available to the public.

38 (d) This section shall remain in effect only until May 1, 2012,
39 and as of that date is repealed, unless a later enacted statute, that
40 is enacted before May 1, 2012, deletes or extends that date.

1 *SEC. 3. The Legislature finds and declares that a special law*
2 *is necessary and that a general law cannot be made applicable*
3 *within the meaning of Section 16 of Article IV of the California*
4 *Constitution because of unique circumstances concerning the South*
5 *Coast Air Quality Management District.*

6 *SEC. 4. This act is an urgency statute necessary for the*
7 *immediate preservation of the public peace, health, or safety within*
8 *the meaning of Article IV of the Constitution and shall go into*
9 *immediate effect. The facts constituting the necessity are:*

10 *Due to the court decision in Natural Resources Defense Council*
11 *v. South Coast Air Quality Management District (Super. Ct. Los*
12 *Angeles County, 2007, No. BS 110792), the South Coast Air Quality*
13 *Management District is unable to issue over a thousand pending*
14 *permits that are either exempt from offset requirements or qualified*
15 *to use offset credits from the district's Priority Reserve and is*
16 *required to set aside thousands of permits already issued.*
17 *Therefore, in order to allow the district to issue permits in an*
18 *expeditious manner as an urgent interim measure, it is necessary*
19 *that this act take effect immediately.*

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21
22 **All matter omitted in this version of the bill**
23 **appears in the bill as amended in Senate,**
24 **June 17, 2009 (JR11)**
25